

ORDINANCE NO. 783

ORDINANCE OF THE CITY OF ROHNERT PARK, CALIFORNIA AMENDING CHAPTER 12.04, "ENCROACHMENTS," OF TITLE 12, "STREETS AND SIDEWALKS," OF SECTION 12.04.010, "DEFINITIONS," TO DEFINE "CITY ENGINEER," "VIDEO SERVICE PROVIDER," AND "CABLE OPERATOR," AND TO ADD SECTION 12.04.130, "DENIAL OF APPLICATION FOR CABLE OPERATOR OR VIDEO SERVICE PROVIDER ENCROACHMENT PERMITS," OF THE ROHNERT PARK MUNICIPAL CODE

WHEREAS, the Digital Infrastructure and Video Competition Act of 2006 ("AB 2987" or the "Act"), adopted by the California Legislature in August 2006, is effective January 1, 2007, and

WHEREAS, the Act creates a process whereby video service franchises are granted by the State and administered by the California Public Utilities Commission (CPUC), and

WHEREAS, the CPUC must commence accepting applications for a State video service franchise no later than April 1, 2007, and

WHEREAS, the Act requires local entities to approve or deny an application for an encroachment permit from a State video service franchisee within 60 days of receiving a completed application, unless mutually agreed to by both parties, and

WHEREAS, if an application for an encroachment permit is denied, the State video service franchisee shall be furnished with a detailed explanation of the reason for denial, and

WHEREAS, the Act requires local entities to adopt regulations for State franchised video service providers to appeal the denial of an encroachment permit application issued by a department of the local agency to the governing body of the local entity, and

WHEREAS, the City of Rohnert Park has no such regulations,

WHEREAS, the adoption of such regulations will comply with the requirements for an appeal process as mandated by AB 2987, and

WHEREAS, Title 12, Chapter 12.04 of the Rohnert Park Municipal Code addresses Encroachments, and

WHEREAS, the City wishes to update Chapter 12.04 to establish regulations for State franchised video service providers to appeal the denial of an encroachment permit application, and

NOW, THEREFORE, the City Council of the City of Rohnert Park does ordain as follows:

SECTION 1: Section 12.04.010, "Definitions," of Chapter 12.04, "Encroachments," is amended to read as follows:

"12.04.010 – Definitions

- A. "Cable operator" has the meaning set forth in Public Utilities Code Section 5830 (b).
- B. "City engineer" means the city engineer for the city or his or her designee.
- C. "City street" includes all or any part of the entire width of a city street, public right-of-way, or city owned utility easement, whether or not such entire area is actually used for street purposes.
- D. "Encroachment" includes any curb, gutter, culvert, sidewalk, underground utility, above-ground utility or any other structure or object of any kind or character not particularly mentioned in this chapter, which is placed in, under or over any portion of a city street. The term "encroachment" does not include trees, shrubs, or plants.
- E. "Person" includes every person, firm or corporation constructing an encroachment itself or through the services of any employee, agent or independent contractor.

F. "Video service provider" has the meaning set forth in Public Utilities Code Section 5830 (t)."

SECTION 2: Section 12.04.130, "Denial of Application for Cable Operator and Video Service Provider Encroachment Permits," is added to read as follows:

"12.04.130 – Denial of Application for Cable Operator and Video Service Provider Encroachment Permits

A. All applications, submitted by a state franchised video service provider, for an encroachment permit shall either be approved or denied by the city engineer within 60 days of receiving a complete application, unless mutually agreed to by both parties. If an application is denied, the city engineer will provide a detailed explanation of the reason for denial to applicant.

B. Appeal of Denial. State franchised video service providers dissatisfied with the denial of the city engineer may file an appeal with the city council by written notice to the city clerk within 10 days of mailing of the city engineer's decision. Within 60 days of receipt of an appeal, the city council will hold an appeal hearing. The city council after considering the action of the city engineer and hearing the appeal or referral shall approve, modify, or overrule the denial. The decision of the city council shall be final."

SECTION 3: Severability. The City Council hereby declares that every section, paragraph, sentence, clause and phrase is severable. If any section, paragraph, sentence, clause or phrase of this article is for any reason found to be invalid or unconstitutional, such invalidity, or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses or phrases.

SECTION 4: Effective Date. This ordinance shall be in full force and effective 30 days after its adoption, and shall be published and posted as required by law.

This ordinance was introduced by the Council of the City of Rohnert Park on February 27, 2007 and was adopted on March 13, 2007, by the following roll call vote.

AYES:	Four (4)	Council Members Breeze, Mackenzie, Smith and Stafford
NOES:	None (0)	
ABSENT:	One (1)	Mayor Vidak-Martinez
ABSTAIN:	None (0)	

CITY OF ROHNERT PARK

/s/Jake Mackenzie, Mayor Pro Tempore

ATTEST:

/s/Judy Hauff, City Clerk

APPROVED AS TO FORM:

/s/Gabrielle P. Whelan, Assistant City Attorney